

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
June 13, 2013

Meeting called to order at 6:09 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell, Rich Balano

Members absent:

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes:

May 23, 2013

Ms. Grinnell moved to approve the minutes as corrected

Ms. Driscoll seconded

Motion carried unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

There was no Public Comment.

PUBLIC HEARING

ITEM 1 – Landgarten/578 Haley Road Renovations – Shoreland Development Plan Review

Action: Discuss site walk, hold a public hearing, review plan and grant or deny plan approval. Owner and applicant Michael Landgarten is requesting approval of their plans to expand an existing non-conforming building located on Haley Road, Tax Map 26, Lot 36, in the Kittery Point Village and Shoreland Overlay zones. Agent is Jesse Thompson, Kaplan Thompson Architects.

A summary of the Site Walk for this property was presented. Ms. Driscoll noted a corner of the deck was too close to the wetland setback, but otherwise appears compliant.

Jesse Thompson stated the proposed development does not extend any further into the wetland setback.

The Public Hearing opened at 6:13 p.m.

Gregory Ulrich, Bartons Creek, abutter, stated he viewed the plans and expressed his support for the project and believes it is conforming with other properties along Bartons Creek.

The Public Hearing closed at 6:15 p.m.

Mr. Melanson moved to accept the plans and move to the Findings of Fact

Ms. Driscoll seconded

Motion carried unanimously

Findings of Fact

WHEREAS: Owner and applicant Michael Landgarten is requesting approval of their plans to expand an existing non-conforming building located at 578 Haley Road, Tax Map 26, Lot 36, in the Kittery Point Village and Shoreland Overlay zones. Agent is Jesse Thompson, Kaplan Thompson Architects

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”).

1. Shoreland Overlay Zone Project Plan Review Application, dated 4/18/2013
2. Site and Area Plans (A-0.0 and A-0.1) entitled Renovation Michael Landgarten and Sam Curren dated 4/18/2013
3. *Standard Boundary Survey & Existing Conditions Plan for 578 Haley Road...* prepared by Easterly survey dated 1/18/13 REV 4/8/13
4. Final Plan entitled Shoreland Area Calculations by Kaplan Thompson Architects. dated 5/30/2013, REV 1 Sheet (PB-1.2) Site Plan & Area Calculations, *Renovation Michael Landgarten and Sam Curren, 578 Haley road, Kittery, ME.*

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings:

FINDINGS OF FACT

I. Standards in the Shoreland Overlay Zone

Title 16.3 LAND USE ZONE REGULATIONS have been met.	
16.3.2.17. D Shoreland Overlay Zone - Standards. The proposed addition does not increase the impervious area for the property greater than 20% of the lot area. The percentage of the total existing impervious area (5,183 SF*) is approximately 4.9%**. Proposed is approximately 5.41% with the proposed impervious area of 5,726 SF. **Based on Lot Area of 105,800 SF	
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining	

II. Standards for Non-Conforming Structures (within and outside the Shoreland Overlay Zone)

Title 16.7 GENERAL DEVELOPMENT REQUIREMENTS have been met	
16.7.3.1 Prohibitions and Allowances. <i>A. Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.</i>	
The proposed development is no closer than the existing structure to the protected resources (freshwater wetland to the north and the tidal Bartons Creek to the south).	
The proposed development within 100 feet from the freshwater wetland (located to the north) is not any closer than the existing structure currently is. The proposed development meets the standard to be <i>no more nonconforming than the existing condition.</i>	
16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones.	
16.7.3.6.1 Expansion.	
Volume: Existing Total: 21,363 CU FT* Proposed Expansion 6,109 CF 28.67% (Allowance is 30%) * There are no previous expansions after 1/1/1989	Square Footage (Total Floor Area): Existing Total: 2,621 SF* Proposed Expansion: 596 SF 23% (Allowance is 30%) * There are no previous expansions after 1/1/1989
<i>B. The development proposal does not include a full replacement.</i>	
<i>C. The development proposal does not include any expansion or replacement of the building's foundation.</i>	
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining	

III. Procedures for Administering Permits For Shoreland Development Review

16.10.10.2 D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

1. <i>maintain safe and healthful conditions;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
2. <i>not result in water pollution, erosion or sedimentation to surface waters;</i>
The proposed development does not appear to have an adverse impact. A Note on the final plan should include the Maine DEP's BMP's, including erosion control measures to be followed during site and building renovations.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
3. <i>adequately provide for the disposal of all wastewater;</i>
The proposed development does not appear to have an adverse impact. Property has recently been inspected and an adequate system is in place.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
4. <i>not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
5. <i>conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
6. <i>protect archaeological and historic resources;</i>
The proposed development does not appear to have an adverse impact
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
7. <i>not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;</i>
Board members concur this standard is not applicable.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
8. <i>avoid problems associated with floodplain development and use</i>
The proposed development does not appear to have an adverse impact
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
9. <i>is in conformance with the provisions of this Code; and</i>

The proposed development appears to be in conformance to the Town Code, see sections I and II above. Final plan must be revised to include minor changes (typographical in nature).
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining
10. <i>recorded with the York County Registry of Deeds.</i>
After Final plan is signed the Applicant must record the plan at the York County Registry of Deeds within 90days of the approval.
Vote: <u>7</u> in favor <u>0</u> against <u>0</u> abstaining

NOW THEREFORE the Kittery Town Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed development will have no significant detrimental impact, contingent upon the following condition(s):

Conditions of Approval: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. Revise drawings to reflect minor typographical changes indentified by Staff
2. Final Plan must include notes that reflect adherence to the Maine DEP *Best Management Practices* for all work associated with site and building renovations to ensure adequate erosion control and slope stabilization.
3. Any additional changes and modifications to the final plan must be approved by the Planning Board.

The Planning Board accepts the above *Findings of Fact* as read, *Application Waivers* and *Conditions of Approval* if any, and approves the proposed *Development* and authorizes the Planning Board Chairman to sign the Final Plan and Findings of Fact after the said conditions have been met.

Move to accept the above *Findings of Fact* as read, *Application Waivers* and *Conditions of Approval* if any and approve the proposed *Development* in the Shoreland Overlay Zone on the property located at 578 Haley Road, Tax Map 26, Lot 36 and authorize the Planning Board Chairman to sign the Final Plan and Findings of Fact after the said conditions have been met.

Vote: 7 in favor 0 against 0 abstaining

Approved by the Kittery Planning on June 13, 2013

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 2 – Stone Meadow Cluster Subdivision, Brave Boat Harbor Rd. – Preliminary Plan Review.

Action: Hold a public hearing review preliminary plan application. Owner Acadia Trust, N.A, and applicant Harbor Street LP, is requesting approval of their plans for a 27-lot subdivision on a 59.8 acre parcel off Brave Boat Harbor Rd., Tax Map 69, Lot 6, Residential-Rural and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Chairman Emerson asked that those wishing to speak on this item make their comments brief, limiting to three minutes, and without repetition. Should time prevent all testimony, the hearing may continue to another evening.

Jeff Clifford, agent, summarized the proposal, noting the site could accommodate up to 46 lots, but they are proposing 27. The open space totals 71% of the parcel, where 50% is required. He summarized the objectives of the cluster ordinance and noted the proposed design meets and exceeds these objectives, including:

- Linking of common open space; preserved woodland and corridors;
- Vernal pools and soils mapping updated;
- Abutter wetland setbacks and vernal pool identified and included in plans;
- Site line analysis conducted along Brave Boat Harbor Road indicating 350-400 feet of site distance to the north and south of the entrance, involving some ledge removal;
- Project has been submitted to the DEP for Site Location permit;
- Botanical, wildlife and architectural studies have been completed.
- Geohydro analysis is underway with RH Gillespie Engineers;
- Peer review has been conducted and will be ongoing;
- The applicant has met with Kittery Land Trust and abutters;
- Discussions are underway with the DPW for road improvements.

Planner Comments to discuss:

- The road design is a hammerhead and now a cul-de-sac is requested. Board input is needed.
- ROW connection to be determined;
- Connections to adjacent properties, however there are limitations due to the surrounding parcels.
- Preservation and maintenance of open space will be addressed in DEP buffer easements and covenants;
- Widening of street frontage on 103 from approximately 21 to 23 feet with a 6 foot wide pedestrian path;
- Waivers and dimensional modifications and a second site walk.

In summary, the project is consistent with the cluster ordinance and the comprehensive plan desire to have 1-3 acre lots. The applicant has demonstrated a willingness to work with abutters including meetings with the Land Trust, buffering and adjacent parcel survey.

Chairman Emerson explained the Planning Board Bylaws allows the Board to set reasonable time limits and to focus testimony in a public hearing. Discussion of waivers will be held following the public hearing.

Mr. Alesse stepped down.

The Public Hearing opened at 6:43 p.m.

• Vern Gardner, Tuckers Cove, addressed the existing comprehensive plan and referenced the Findings in that regard, noting the project must comply with 'a duly adopted comprehensive plan'. The comprehensive plan was adopted by the residents of Kittery [from Goals]: *to foster the pattern of land use that respects and builds upon the present character of the established settlement pattern of the village core surrounded by open outlying rural areas created by undeveloped land, fields, wooded areas, farmland and wetland and to guide development to growth areas while assuring that new development occurs in a manner that is compatible with the existing settlement pattern and enhances the desired pattern of land uses.*

In speaking in opposition to the development, he presented a map that illustrates Kittery is organized in these described areas. This project is in the Rural Conservation area. Reading from the Comprehensive Plan:

- *This designation includes those areas where the Town desires to maintain a rural landscape and to discourage intensive residential development.*
- *To avoid promoting development in areas of Kittery currently used for agricultural and other rural activities; to protect environmental and ecological sensitive scenic areas; to preserve open space through the community.*

- *The Town shall establish an ongoing practice for monitoring the rate and location of residential development. If the rate of new residential development exceeds the average rate of the last five years the Town can explore caps.*
- *The Town's land use regulations shall assure that the residential development in the areas designated at rural retain a rural rather than create a suburban landscape.*
- *The Town shall continue to explore and support opportunities to purchase and acquire open space and conservation easements and land.*
- *The Town shall actively work with property owners of large parcels of open land to educate them of non-development options and to find ways that the owners' interests can be met without developing land.*

The comprehensive plan is the basis in which the ordinance is developed. It's not whether or not the town would win a potential lawsuit, but whether a lawsuit would be filed. The outcome seems obvious.

- Sarah McDaniel, Attorney representing abutters, Hill and Kalmar.

1. The conditions of the soils on the project parcel make it impossible to approve the project. The ordinance is clear about 'lands unsuitable for development', regarding location of building lots and determining net residential acreage. In this case, poor or very poor soils have been excluded from the net residential calculations. This area has zero net residential acreage because of the poor soils.
2. State statute allows the Board of Appeals, not the Planning Board, to grant variances. Requests for dimensional modifications are variances from zoning ordinance standards. Though the ordinance states these shall not be considered variances, courts of law have found otherwise. What are the standards to grant waivers? Each property is unique. Requirements are a maximum road length (1200 feet) and two entrances for a 27-lot subdivision. Doubling the length of the road does not fit cluster subdivision requirements.
3. The point of a cluster subdivision is to provide for a denser development with more open space, including 30% of the developable area, which in this case isn't actually developable.

The ordinance needs to be applied as written throughout the community.

- Michael Cuomo, Soil Scientist, representing Hill and Kalmar, abutters. For the applicant to provide information after the public hearing does not allow response by his clients. The DEP and DIFW have indicated a late summer field inspection may be needed. His clients request the Board require that it be certified a septic system can be built in the areas of the test pits as shown on the plan and the applicant use advance pre-treatment to protect groundwater and natural resources. The plan presented does not address the existing natural resources constraints or complies with the intent of the cluster ordinance.

Ms. Grinnell noted the documents referenced by Mr. Cuomo have not been included in the packets. It was noted it was submitted after the packets were compiled.

- Durwood Parkinson, Attorney, representing the developer.

Regarding the waivers as discussed previously, there is case law supported by state statute (30A §4452). that allows the Board to enact waivers. This was established so Boards can grant waivers without being considered variances in order to allow planners the tools to develop cluster ordinances. He introduced Jim Logan.

- Jim Logan, Albert Frick Associates, referenced the soil suitability guide from the 60s and 70s. The soils issue comes up often in many Maine communities. The federal Soil Conservation Service stated in 1989 that *it is our intent that the newly developed soil potential ratings were intended to replace the existing guide as it was developed without regard to region.* He read: *The Maine soil suitability guide is outdated and should not be used...for soil interpretation...and would encourage any reference to the Maine soil suitability guide in Town regional planning or subdivision ordinances be deleted.* [1996]. The state soil scientist reiterated the previous guide was basing its soil suitability on existing conditions without modification or engineering and tended to rate soils in a negative context. The newer soil ratings guide was used in Lemoine, Maine (with similar soils as Kittery) whereby the entire Town would not have a leach bed if the old soil suitability ratings were utilized. The new ratings relieved those

constraints. The ordinance citation to the old soils suitability rating guide is inappropriate when applying to net acreage.

Mr. Melanson noted the May packet referenced the letter from Mr. Cuomo but did not include the letter.

- Kathy O'Neil, 193 Brave Boat Harbor Road. Expressed her concerns about the 27 septic systems in the proposed development that could impact the aquifer in the area. She read: *The Planning Board may not approve portions of any proposed development that employs septic sewage disposal that is located on soils rated poor or very poor by the Soils Suitability Guide for Land Use Planning in the State of Maine.* Whether or not the guide is outdated, the soils are poor. From CMA Engineers: *the on-site water and septic systems are feasible; most of the test pits show limited soil thickness over bedrock; such vertical limitations typically require mounded leach fields and pumping systems. While the systems can be feasible, the applicant should characterize which lots will likely require such systems or special design considerations and the overall expected performance.*

She read: *The Planning Board may not approve portions of any proposed development that is located on land which must be filled or drained or on land creating a diverting water course. Except the Planning Board may grant approval if a central sewage system collection and disposal system is provided.*

Mounded fields and pumping systems would require fill, and is concerned about the vague conclusion that on-site systems are feasible.

Regarding the Soil Suitability Guide, the Planning Office stated: *the referenced document is out-of date (published 1975) and is no longer useful, and that applying subsequent publications (i.e. York County Soil Survey) would effectively characterize more than 95% of the town as "poor or very poor rated soils". Apparently, from speaking with engineers who have worked in Kittery over a long period of time, this standard/requirement has not been applied.* Maybe the town sewer system was installed because of poor soils. Placing 27 septic systems in poor/fair soils or systems requiring fill will cause significant problems. She suggested the town sewer system was installed due to poor soils, and if the code is outdated it should be changed, not ignored. This development is not suited for this parcel of land based on the septic systems needs, notwithstanding other environmental impacts, and septic systems should not be allowed.

- Karen Kalmar, 191 Brave Boat Harbor Road, submitted a petition with 333 signatures of those opposing this development. She has lived at this property for the last 30 years. They are concerned about water quantity and quality and impact on their well water quality and property value; impact on water runoff to Brave Boat Harbor; wildlife habitat on and around her property; wishes to preserve the rural neighborhood, habitat, water source, and watershed to preserve and protect Brave Boat Harbor; the developer noted he is working with Kittery Land Trust and hopes they will come to terms to conserve this land; the Board needs to adhere to the code to maintain the confidence of the community, and by denying this application will be acting in the best interest of the community. She thanked the Board for their service.

Ms. Grinnell noted there are too many items on the agenda. How will the Board proceed? Chairman Emerson stated the public hearing may go another 20 minutes, and will request a show of hands for testimony regarding soils, waivers, groundwater, wildlife habitat, etc. Concerns outside of these issues may be expressed. He stated written testimony will be accepted.

- Maurice Gendron, 181 Brave Boat Harbor Road, noted his concern about his well water, and 27 new wells will compromise their wells as each home will require on average 350 gallons of water per day, equivalent to 3,449,250 gallons of water per year. All the water will be drawn from the local aquifer. Please prove this will not deplete the water supply. There will be less groundwater recharge, and will drilling and blasting impact the water quality and course. Surrounding properties will be uninhabitable if the water is impacted. There should be hydrologic testing done to determine there is sufficient water available for current and future use after recharge, based on code requirements. He does not believe this is an adequate aquifer for this development.

- Jim VanKenen, 19 Short Farm Road, Kittery Point, spoke about the large amount of water draining nutrients downhill into Brave Boat Harbor which contain nitrogen, phosphates and potassium creating algae bloom. This may occur in 5, 10, or 25 years, but Kittery will be responsible for the impact on Brave Boat Harbor. A new water line will cost \$633,000 per mile to bring in a water line; a sewer line would cost more than this. He does

not want to leave a \$2.25 million obligation to his children to remediate the sewer and water problems in this area. The Board needs to decide if this is a good or bad gamble and investment.

- Charlie Simpson, Brave Boat Harbor Road is concerned about traffic, and the development will make it worse with over 300 trips per day. Add in friends, relatives, garbage trucks, snow plows, utility and delivery trucks, etc. totaling a conservative 400 trips per day. This is a scenic, rural road used by residents, workers and tourists, walkers, runners, etc.; it has sharp curves, hills, hidden drives, and side roads with no bike lane, sidewalks, shoulders; the speed limit is seldom obeyed or enforced. There have been over 80 accidents over the last 6 years on Rt. 103 and this development will place additional traffic on an already congested area. The ordinance requires the development will not cause unreasonable road congestion or unsafe conditions and must provide adequate traffic circulation both on site and off. He encouraged the Board to require stringent standards in light of the current conditions, and asked if road safety is already lacking for current residents, how can future residents be well served unless the Board makes road safety a priority in the planning process?
- Craig Wilson, Charles Hill Road, noted the Town Attorney advised the Planning Board not to grant waivers in letters to former Planners, and cautioned the Board likewise.
- Megan Kline, 6 Juniper Point, noted when she served on the Board and waivers were granted, they were very cognizant of the impact those waivers would have. By extending the road length, allowing for more units, This project is too heavy an impact; sidewalks are imperative because of the deer tick problem.
- Earle Wells, Conservation Commission, the KCC sounded the alarm about the number of failing systems in Kittery due to soils.

Chairman Emerson summarized the issues discussed:

- Inadequacy of soils
- Number of septic systems
- Aquifer/Water runoff
- Wildlife/plant habitat
- Blasting and filling
- Following the code
- Impervious surfaces
- Preservation
- Waivers
- Natural features/vernal pools
- Pending reports/studies
- Attention to the comp plan
- Traffic/pedestrian/bicyclist concerns

• Kate Mitchell, 623 Haley Road, echoes the concerns previously presented. There are young couples and families living in Kittery interested in preserving its history and character. There are two FEMA evacuation route signs on Rt. 103, pointing in opposite directions, and feels this is the last area a 27-unit development should be located.

- Ann Sowby, 150 Brave Boat Harbor Road, read a letter from Faith Harrington, 3 Sea Oaks Lane:

I am writing to you as a concerned citizen regarding the historical and archaeological resources within the proposed Brave Boat Harbor development project to be discussed at the June 13 Planning Board meeting. In the fall of 1978 I served on a team of professional archaeologists on the research and excavation of the Andrews-Mitchell Garrison house located on a property within the Brave Boat Harbor project area. It is believed this garrison house was built during Kittery's early colonial period, possibly as early as the late 17th Century. Large sections of this garrison house and many historical artifacts of daily life are on display at the Kittery Historical and Naval Museum directly across from Town Hall. These garrison houses served as both farmsteads and as the first line of defense for communities against attacks by Native Americans. The museum exhibit provides an important teaching tool for school children and the general public. Our field research in 1978 was limited due to the constraints of time and money so it is highly likely there are more archaeological features and artifacts buried in the soil in the Brave Boat Harbor development area. It is critical the Town considers these scarce and historic resources as they make decisions regarding this development. In other towns and cities, areas have been set aside for preservation and/or future research. Other times a

comprehensive plan for mitigation, research or excavation, of the resources is accomplished. I ask that you please consider the Town's archaeological resources in formulation of a development plan for Brave Boat Harbor.

- Peter Motson, 3 Payne Road, read a statement from Dean Rykerson:

I am so sorry I can't attend the public hearing concerning the future of our Town. My work is in preservation architecture and my goal is preservation of the natural built environments. In the 30 years I have studied the evolution of our building forms, I have discovered patterns of development and how we construct the places where we live and work. There are reasons why New England and Maine settlements are considered some of the most beautiful in the world. We are consciously fortunate to have varied scale and form tempered by the passage of time. When our ancestors developed our towns with houses, barns, mills and shops they created a rich collage inter-mixed with the natural world. This mix, changing over time, is one of the greatest assets of our town. When we create a monoculture of structures of one type, similar form and materials all built in a short time, it is detrimental to the greatest quality of our town. The natural, slow varied growth of the past, when faced with the development being proposed, patterns that have developed over the centuries will be ruined. Randall Arendt is a conservation planner whose work informed both the cluster zoning concept and the details for this development near Brave Boat Harbor. Arendt's work improves the awful mistakes of a standard mass subdivision, but it should in no way be taken as dogma. Traditional slow, varied and mixed-growth patterns are an even better way to grow our town for the future.

- Steve Delaney, Rt. 103, asks the Board to think about a quote from Jacques Cousteau. "All of us are involved. No one's private capital should influence the environment in which we all must live." We don't need the traffic and pollution, noise and congestion, impact on water quality, lost of species and habitat, all the failures of development, and the after-the-fact repairs of damage and/or to facilitate this Massachusetts-style cluster subdivision.
- Mark Alesse, 176 Brave Boat Harbor Road, (See Attachment)

Ms. Grinnell moved to continue the public hearing

Ms. Driscoll seconded

Ms. Grinnell noted there are documents not yet received by the Board the public has a right to see as well and respond to. Ms. Tuveson noted written submittal will be seen by the Board, and will like a date certain to continue the hearing.

Mr. Clifford stated the hydro-geo report should be done by the end of the month. Mr. Melanson suggested the motion be amended to continue the public hearing in July. Ms. Driscoll asked for other studies including fill removal. Mr. DiMatteo suggested waiting until the material is received prior to calling a date for the continuance. Ms. Grinnell withdrew her motion to continue the public hearing as long as a second hearing will be held.

Ms. Driscoll seconded the withdrawal

Chairman Emerson closed the public hearing, with a second public hearing to be held once the needed materials have been submitted for review.

Chairman Emerson asked Attorney McEachern to address the issue regarding waivers.

Attorney McEachern stated he did instruct the Board 10 years ago to stop granting waivers because it was his opinion the waivers granted at that time amounted to variances. Since that opinion, the state statute has changed: Title 30A §4353 4C – Variances from Dimensional Standards

A zoning ordinance may also explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required in order to promote cluster development to accommodate lots with insufficient frontage or to provide for reduced setbacks on lots for buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance.

The Planning Board has no authority to grant a variance, but under the cluster ordinance those standards may be waived and not be considered a variance.

Ms. Driscoll asked if the Board is required to issue waivers. Mr. McEachern stated the waiver must meet the criteria. The intent was to provide Planning Board's the flexibility to work with cluster designed developments.

Ms. McDaniel stated this statute does not apply to the length of the roadway and will be providing additional information in this regard.

Break

OLD BUSINESS

ITEM 3 – Kittery Municipal Center/Memorial Park –Modifications to an Approved Plan

Action: Review final site plan and grant or deny preliminary and final approval. The Town of Kittery in conjunction with the Thresher Memorial Project Group proposes to create a Memorial Park (a.k.a Circle of Honor) on the east-side of Town Hall. Additional work includes: landscape treatment for Memorial Circle and an ornamental base for the Thresher memorial flag pole. The area is located at 200 Rogers Road in the Business Local (B-L) Zone and identified as Map 22 Lot 20A and 20. Project represented by a Thresher Project Group representative.

Earldean Wells, Conservation Commission, stated the Board had agreed that no decisions would be made on this project unless all three components were presented, and the rain garden is not included here.

Chairman Emerson stated the DEP has provided guidance regarding the rain garden area and their recommendations are incumbent upon the DPW, but not part of the Board's review. The sidewalk in that area has been removed.

Gary Beers, Thresher Group, summarized the revised plans noting they have been reviewed by CMA who found no issues. Regarding supplemental parking, including handicapped spaces, he did not believe they are warranted as existing parking is sufficient behind Town Hall, with 138 spaces plotted. All existing parking is within the 75-foot wetland setback and they are not in favor of making additional spaces.

Chairman Emerson asked if the rear parking is reserved for Town employees. Mr. Mylroie stated they are during office hours. Ms. Grinnell asked where the 8 parking spaces are proposed. Mr. Beers asked for a relief from these proposed spaces as there is adequate parking in the area. If needed, they can request shared parking approval from the Board of Appeals, however, on average, there are 14 parking spaces open during the typical work day at Town Hall. Mr. Emerson concurred they do not want parking within the wetland setback, and suggested handling with signage such as 'Parking for Employees and the Thresher Memorial'. Mr. Balano stated these 8 spaces as illustrated need to be removed from the plan prior to signing and a condition of approval should include this.

Discussion followed regarding the Memorial Circle design:

- There will be no provisions for pedestrian traffic in or to the Circle;
- Two granite monuments.

The Circle of Honor design and construction will be paid for by donations with no Town funds or resources used. \$87,000 has been raised for the Circle of Honor and \$64,000 for the flagpole. When the flag is lighted it may be flown for 24-hours and await Board approval of the lighting to do so. When lit, it will be from the ground up, and there will be no light spillover per manufacturer design. The plan is to raise the flag for the day in honor of Flag Day. When the project is complete, there will be a dedicated fund for maintenance and flag repair and replacement. There are 8 connections to the lanyard and raising would require a minimum of 2 people.

Mr. Melanson moved to approve the final plan for the Thresher Memorial Park

Mr. Balano seconded

Ms. Driscoll asked for removal of the 8 parking spaces on the proposed plan A-4 and removing Figure 1B-LID Area approval package as the Board is not approving the raingarden.

Mr. Balano moved to add a Condition #4 to remove proposed parking spaces from all project drawings.

Mr. Melanson seconded

Motion carried with 6 in favor, 0 opposed, and 1 abstention (Grinnell)

Mr. Melanson read the Findings of Fact

WHEREAS, the Town of Kittery, applicant and owner of the Kittery Municipal Site, proposes site modifications to an approved Site Plan that includes a public memorial out-door space, also known as *Memorial Park* to be located in an existing lawn area fronting Rogers Road Extension. The property is

located in the Business Local Zone (BL), Map 22, Lot 20A. In addition, the applicant proposes site and landscape design improvements associated with the interior of Memorial Circle; Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the “Plan”), prepared by Attar Engineering, Inc. (or as noted).

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.4. and as recorded below:

FINDINGS OF FACT

A. Development Conforms to Local Ordinances.
CMA Engineers: The project is an allowed use in the Commercial 3 (C-3) zoning district. Lighting of the US flag on the flagpole in the Kittery Traffic Circle is proposed in accordance with the external lighting ordinance.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)
B. Freshwater Wetlands Identified.
CMA Engineers: A single wetland is located at the discharge of the drainage system from the Traffic Circle, east of the proposed development. All development as proposed is located beyond the setbacks required for that wetland.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)
E. Municipal Water Supply Available.
CMA Engineers: Minor water uses associated with the park may occur. The site is serviced by the Kittery Water District service to Town Hall.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)
H. Water Body Quality and Shoreline Protected.
CMA Engineers: A single wetland is located at the discharge of the drainage system from the Traffic Circle, east of the proposed development. All development as proposed is located beyond the setbacks required for that wetland.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)
K. Stormwater Managed.
CMA Engineers: Insignificant changes to existing drainage patterns of impervious area are proposed.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)
L. Erosion Controlled.
CMA Engineers: Insignificant changes to grading or drainage patterns are proposed, and no adverse changes will result.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)
M. Traffic Managed.
CMA Engineers: No significant traffic generation is associated with the development. Access is via Town Hall facilities and sidewalk on Rogers Road Extension. Minimal parking demand will result from the development, and the timing of such small parking demands will likely occur during off-hours from Town Hall activity, and therefore available parking will greatly exceed demand.
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)

P. Developer Financially and Technically Capable.	
The Applicant appears to meet this standard.	
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)	
C. River, Stream or Brook Identified; D. Water Supply Sufficient; F. Sewage Disposal Adequate; G. Municipal Solid Waste Disposal Available;	I. Groundwater Protected; J. Flood Areas Identified and Development Conditioned; N. Water and Air Pollution Minimized; O. Aesthetic, Cultural and Natural Values Protected
Does the Board concur that standards C, D, F, G, I, J, N and O are not applicable to the proposed amendment.	
Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Grinnell)	

NOW THEREFORE, the Kittery Town Planning Board adopts each of the foregoing Findings of Fact and based on these Findings and determines the proposed Development will have no significant detrimental impact. The Kittery Planning Board hereby grants preliminary and final approval for the Development at the above referenced property, with waivers granted as noted and any conditions per Title 16.10.8.2 as noted.

Vote of 6 in favor 0 against 1 abstaining (Grinnell)

Waivers: None.

Conditions: (All conditions must be included on the final plan prior to signature by the Town Planning Board Chair)

1. Revise final amended site plan to include staff and planning board comments and any waivers and conditions and submit to Town Planning Department for review prior to Town Planning Board Chair's signature.
2. Two (2) paper copies of the approved and signed site plan modification and any and all related state/federal permits or legal documents that may be required must be submitted prior to the issuance of any building permit.
3. All changes and modifications to the final plan must be approved by the Planning Board.
4. Remove proposed 8 parking spaces from all project drawings, adjacent to the Circle of Honor.
5. Parking signage to be modified to note parking is available at all hours for town employees and Thresher Memorial visitors.

The Planning Board hereby authorizes the Town Planning Board Chair to sign the Final Plan and Findings of Fact.

Approved by the Kittery Town Planning Board on June 13, 2013

Vote of 6 in favor 0 against 1 abstaining (Grinnell)

Notice to Applicant:

Per Town Code Section 16.6.2 - Appeal of Planning Board, Board of Appeals, or Port Authority Decision.

A. An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 4 – Yankee Commons Mobile Home Park Expansion – Subdivision Plan Review.

Action: Continue Review of Preliminary Plan Application. Stephen A. Hynes, Trustee, owner, proposes to expand the adjacent Yankee Commons Mobile Home Park to create 79 sites on 50 acres. Property is located off Idlewood Lane/U.S. Route 1, Map 66 Lots 24, Mixed Use (MU) Zone. Agent is Tom Harmon, PE, Civil Consultants.

Chairman Emerson summarized the Board found the mineral extraction was not incidental to the project and the applicant was directed to apply for a mineral extraction permit. The CEO concurred with this decision. The applicant appealed the decision of the CEO to the Board of Appeals, and the BoA overturned the CEO's decision. However, the BoA decision is only applicable to the CEO's decision, not the Planning Board's decision.

He suggested the Board needs a motion for re-consideration from the individual who made the original motion. Mr. Melanson stated he made the motion.

Mr. Melanson moved to reconsider

There was no second to the motion

The motion does not carry and the Board will not reconsider their original motion and decision.

ITEM 5 – Board Member Items: Comments and Discussion – This item was deferred due to time constraints.

ITEM 6 – Town Planner Items: A. Miscellaneous; B. Other – This item was deferred due to time constraints.

NEW BUSINESS

ITEM 7 – Route 236 Commercial Lot Subdivision, Paolucci Realty – Sketch Plan.

Action: Review application and schedule a site walk if determined necessary. Owner and applicant Peter J. Paul Trustee of Paolucci Realty, is requesting consideration of plans to divide an existing commercial lot located at 93 Route 236, thereby creating a second division within 5 years and requiring subdivision review. The 4.1 acre parcel is located on a portion of Tax Map 28, Lot 14, in the Commercial C-2 Zone. Agent is Tom Harmon, Civil Consultants.

Tom Harmon introduced the developer, Peter Paul, Jay Stevens, Civil Consultants, and Dean Bouffard. He summarized the project, noting the parcel was purchased from CMP, divided and purchased by two separate trusts. They are asking for a division of the front parcel into two parcels, creating a subdivision.

- An road opening permit was received and an entrance installed off Route 236;
- An entrance permit off Fernald Road was received and a roadway constructed to the back parcel;
- Plans for the back parcel will be brought to the Planning Board at a future date;
- There is no proposed use for the front lots at this time. The applicant wishes to grade the lots and provide sufficient buffers, landscaping, etc. to prepare for potential use, when it will return to the Planning Board for review;
- The applicant would like a determination from the Board regarding the wetlands and whether they need to be regulated. Applicant believes they are man-made due to drainage deficiencies along Rt. 236.

The applicant requested a public hearing in July so grading may begin during the summer.

Mr. Melanson asked about the Fernald Road curb cut.

Mr. DiMatteo stated the Board cannot review the back lot during this proceeding, but it is part of the subdivision and should be shown as such. Mr. Harmon stated the back lot will not be a numbered subdivision lot as it will be subdivided separately as a remainder lot in the future. Mr. Mylroie stated staff has asked the applicant to show the relationship of the rear lot to the front commercial lots.

Ms. Grinnell stated the road installed off Fernald Road was done without Board review and approval, and this item will not be on the next agenda.

Chairman Emerson stated the applicant went through the proper channels to receive the curb cuts, but it is a 'road to nowhere', and is of concern to the Planning Board. He believes they will require wetland fill and the Board can view this during a site walk.

Mr. DiMatteo stated if the Board is comfortable they can accept the sketch plan allowing the applicant to move forward with a preliminary plan application.

Ms. Tuveson moved to accept the sketch plan application and schedule a site walk.

Ms. Driscoll seconded

Motion carried unanimously.

The Board directed the applicant to return to the Board with a preliminary plan and include any recommendations following the site walk.

A site walk was scheduled for June 27, 2013 at 5:00 p.m.

ITEM 8 –Sowerby Mixed Use Development, Route One – Modification to an Approved Plan.

Action: Accept or deny plan application and schedule a site walk if determined necessary and schedule a public hearing. Owner David Sowerby and applicant Mark Patterson, Patco Construction, is requesting approval to amend previously approved 2008 Site & Subdivision Plan to allow the use of on-site septic and well for residential lots rather to be required to connect to public sewer and water. The 6 lots are located along Adams Road, Tax Map 60, Lots 24-1 through 24-6 in the Residential Rural Zone. Agent is Ken Wood, Attar Engineering, Inc.

Ken Wood, agent, summarized the history of the project and approval. Since 2008 marketing efforts have not been successful due to the economy, with Mark Patterson, Patco Construction, being the only interested buyer of the residential lots. The cost of tying residential lots into municipal water and sewer is prohibitive, adding \$20,000 to each lot. The ordinance requires connection within 1,000 feet of municipal sewer, however, [16.8.7.1.B] *If, in the opinion of the Board, service to each lot by a sanitary sewer system is not feasible, the Board may allow individual subsurface waste disposal, or a separate central sewage collection system to be used in accordance with Section 16.8.7.4.* Municipal water lines are on the other side of Adams Road but because of ledge, connection to municipal water is also not feasible. Test pit data has been submitted for primary and reserve septic systems.

Mark Patterson, Patco Construction, stated he has been building homes in Kittery for the lower 80% of buyers, typically starter homes less than \$250,000. The Kittery/York area was designated as one of the 10 most difficult areas to buy a home. In this area, the lots are expensive (50% of the home price) and site preparation is costly, adding to construction costs of \$130,000. The added expense of installing a forced main or municipal sewer and water connections is cost prohibitive for these lots.

Dave Sowerby, owner, said he will have no buyer for lots if connection to municipal services is required. Earledean Wells stated the pond on lot 6 was supposed to be part of the hotel parcel. She also asked about plan approval extensions.

Mr. Sowerby stated he felt the landowner would be more responsible for the pond rather than a commercial owner. He offered to give the pond to the Conservation Commission.

Ms. Grinnell stated she would like to support the request, but supports the ordinance requirement for connection to municipal services.

Ms. Tuveson asked what 'feasible' means, and how does the Board determine this? Mr. Wood reiterated the distances from the sewer line to the individual lots. Ms. Grinnell referenced an email from the Sewer Superintendent George Kathios:

16.8.7.3 Public Sewer Connection Required.

Where a public sanitary sewer line is located within one thousand (1,000) feet of a proposed development at its nearest point, the developer must connect with such sanitary sewer line with a main as required by the sewer department, and provide written certification to the Board from the department that the proposed addition to service is within the capacity of the system's collection and treatment system.

Ms. Tuveson explained the code requirements to connect to municipal sewer also include relief from this requirement.

Mr. Melanson moved to accept the plan modification and schedule a site walk.

Ms. Tuveson seconded

Motion carried with 6 in favor, 1 against (Grinnell), 0 abstentions

A site walk was scheduled for Tuesday, June 25 at 5:00 p.m. Board members will meet on Adams Road.

ITEM 9 – Knutel/56 Chauncey Creek Road – Shoreland Development Plan Review

Action: Accept or deny plan application and schedule site walk and/or public hearing. Owner and applicant Philip Knutel is requesting approval of their plans to expand an existing non-conforming building located on Chauncey Creek Rd., Tax Map 44, Lot 55, in the Kittery Point Village and Shoreland Overlay zones. Agent is Architect Tom Emerson, Studio B-E.

Chairman Emerson recused himself to present the application. Ms. Tuveson assumed the position of Chairman.

Mr. Emerson noted almost 100% of the lot is within 100 feet of the high water mark, though further removed than neighboring home and shed. Additionally, the structure is nonconforming, within the 40-foot front setback. He summarized the proposed changes to the structures, including moving of stone walls. All proposed work is within the existing nonconforming areas and do not create any new non-conformities. Ms. Tuveson noted the proposed expansions are within the allowed 30% over the lifetime of the structure.

Ms. Grinnell moved to accept the application, schedule a site walk and schedule a public hearing

Mr. Melanson seconded

Motion carried unanimously by all voting members

A site walk scheduled for Tuesday, July 2 at 5:00 p.m. The public hearing was not scheduled.

Ms. Grinnell asked about previous Board discussion regarding limiting building permits in order to work on the ordinance. Mr. Emerson stated this should be on the June 27 meeting agenda.

Mr. Melanson moved to adjourn

Ms. Grinnell seconded

Motion carried unanimously by all members present

The Kittery Planning Board meeting of June 13, 2013 adjourned at 9:53 p.m.

Submitted by Jan Fisk, Recorder – June 19, 2013

ATTACHMENT

My name is Mark Alesse. I live at 176 Brave Boat Harbor Road with my wife and son. I am retired.

I am the member of the Planning Board who was asked to recuse himself from review of this proposal because after I reviewed it, looked at the drawings, walked the land and spoke with neighbors, I opposed it.

I know that some on the board may cavil at my argument, but please hear me out. If this goes forward it will encourage more development in Kittery and Maine's rural areas. It WILL encourage other large-scale development proposals not in keeping with Maine or with good sense.

After a short time on the board I learned about a document called, "the Comprehensive plan." I didn't know what it was at first, – but I knew it was important, because it kept coming up in meetings. Now I know that it is the Kittery citizenry's bible for guiding development rationally.

It was written by Kittery's leading residents and ratified by its voters; and though it hasn't *the force of law* behind it yet, it certainly has a moral weight by virtue of its lineage *and* its wise council. (In my view, our Planning Board *should* keep that in mind.)

THE COMP PLAN urgently calls on Kittery to cease large-scale development in sensitive coastal areas, particularly those without public sewer and water. Wise council.

Their reasons were many...but you could look first at the fact that much of Kittery's rural coastland is generally unsuitable for development.

We know the Heliwell property is upland of Brave Boat Harbor, -- comprised of uneven rolling hillocks of ledge, with emergent vernal streams and wetlands. Building on it requires destructive blasting, digging, and a lot of materials removal.

Do we know exactly how many tons of mineral will have to be removed to build 27 homes on ledge-rock? The Planning Board greatly concened about extensive mineral extraction in a trailer park application to expand. Why don't we ask the same questions about this relatively massive undertaking?

But that is almost secondary, when one considers how mistaken in other ways it would be to grant permission for a development of this size on Brave Boat Harbor Road. Large development is *entirely* out of character with this unique coastal road that runs right through the heart of historic Kittery. It would create something that no thinking person would want.

The State of Maine is committed by statute and custom to avoiding mistakes made in the past along much of the New England coast. Big problems always follow large-scale development in small towns or too near the rural coast and wetlands.

We all know that when quaint small towns let over-development happen it ruins existing property values, diminishes the quality of life, and makes them look like everyplace else. We cherish Kittery Point for what it is; quaint and historically relevant. We have a responsibility to protect it.

Some are going to say that if what he's doing is *legal*, we can't stop him; no matter how **bad** we think his housing development is going to be for our coastal road, historic town and natural environment. Don't buy that.

I'm 100% for treating everyone as an equal before the law, but high standards for regulatory oversight *need not be a suicide pack for exceptional towns like Kittery*. Not all development proposals are equal.

If the planning board will *only listen* to the good people who wrote the Comprehensive Plan; – listen to the neighbors on Brave Boat Harbor Road and Route 103, – and listen to the people here tonight, it will be very well-advised as to how to proceed. They *are* the Town of Kittery.

We who live on Brave Boat Harbor Road know better than anyone what this development will take away from us *and* from the town forever.

We will lose something of value as homeowners, as environmentalists, and as proponents of open spaces; all of which have the highest potential to raise the value of Kittery as a place to live to amazing heights.

I urge my colleagues to respect the views of the people of Kittery; **obey the law (by all means)**; but don't assist this development in any way.

You are under no obligation to do so. They came into our town, riled up the people, and threatened to expand an already unwanted development. *If they now expect a special waiver so they can build, don't give it.*

Don't give them a free pass to ruin our coastal home.

You do not have to give them a waiver for road length. Don't send a message to other developers that Maine can be rolled by lawyers and money.

Please don't grant *any* waivers to allow *anyone* to build big in an environmentally sensitive and historically valued place. And please, continue asking relevant questions. We owe it to Kittery, past and future, to get this right.

So, I respectfully request that the Board inquire how much mineral extraction will be required to build the proposed 27 houses on this land.

And, I respectfully request that we seek a Municipal fiscal impact statement of all potential Town of Kittery budgetary impacts from this development, – including any reduction in the value of homes nearby and the impact on tax collections, police and fire services, additional classroom space, and any other relevant information.

Thank you for receiving my testimony this evening.